

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MARGARET A. EVANS	:	CIVIL ACTION
	:	
v.	:	
	:	
MERCK & CO., INC.	:	NO. 01-4820

MEMORANDUM AND ORDER

HUTTON, J.

January 23, 2002

Presently before the Court are Defendant Merck & Co., Inc.'s Motion to Transfer this Action from the Eastern District of Pennsylvania to the Southern District of Indiana Pursuant to 28 U.S.C. § 1401(a) (Docket No. 4), and Plaintiff's Answer to Defendant's Motion to Transfer (Docket No. 5). For the reasons discussed below, Defendant's Motion to Transfer is **GRANTED**.

**I. BACKGROUND**

On September 24, 2001, Plaintiff Margaret Evans ("Plaintiff") commenced the instant action in the United States District Court for the Eastern District of Pennsylvania, seeking relief under the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 623-34, and the Indiana Civil Rights Law, IC 22-9-1-1, et seq. See Pl.'s Compl. at ¶ 1. Plaintiff, a resident of the state of Indiana, was employed by Defendant Merck & Co., Inc. ("Defendant") as a Professional Sales Representative in the Indianapolis Region

of Defendant's United States Human Health ("USHH") Division from April of 1987 until her termination on September 21, 2001. Id. at ¶ 7. While Defendant is a New Jersey corporation, Defendant's USHH Division is headquartered in West Point, Pennsylvania.

According to Plaintiff's complaint, Defendant terminated Plaintiff because of her age and in retaliation for encouraging an African-American co-worker to "vindicate his civil rights." See Pl.'s Compl. at ¶ 9. Specifically, Plaintiff charges two of her district managers with alleged discriminatory conduct, including ridiculing Plaintiff for discussing her Native American heritage and wrongfully disciplining Plaintiff after she supported her co-worker in objecting to disparaging racial comments. In her complaint, Plaintiff alleges that jurisdiction and venue are proper in this District because the Defendant Corporation "is a resident of and transacts its affairs in this judicial district." See Pl.'s Compl. at ¶ 3. Defendant now seeks to transfer this case to the Southern District of Indiana pursuant to 28 U.S.C. § 1401(a). Plaintiff opposes this action and requests that Court retain jurisdiction over the case.

## **II. LEGAL STANDARD**

"For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." 28 U.S.C. § 1404(a). The decision whether to transfer an action

pursuant to section 1404(a) rests within sound discretion of the trial court. See Lony v. E.I. DuPont de Nemours & Co., 886 F.2d 628, 631-32 (3d Cir. 1989). The moving party bears the burden of establishing the need for the transfer. Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995).

The inquiry on a motion to transfer is two-fold. The court must first determine whether venue is proper in the transferee district. See Weber v. Basic Comfort, Inc., 155 F.Supp.2d 283, 285 (E.D. Pa. 2001); Matt v. Baxter Healthcare Corp., 74 F.Supp.2d 467, 468 (E.D. Pa. 1999); see also Jumara, 55 F.3d at 879 (stating that moving party has burden of showing the appropriateness of the transfer). Second, the court must determine whether, considering the "convenience of parties and witnesses" and the "interest of justice," a transfer is appropriate. See Matt, 74 F.Supp.2d at 468. To aid in this determination, the court considers a number of both private and public interests. See Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1947).<sup>1</sup> The private interests include:

the forum preference of plaintiff, as

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<sup>1</sup> While the Supreme Court articulated these factors with respect to a motion to dismiss for forum non convenience, courts routinely look to the Gulf Oil factors in deciding a motion to transfer venue under section 1404(a). See, e.g., Smith v. Nicolet Instrument Corp., 1992 WL 78833, at \*1 (E.D. Pa. April 10, 1992). Because transfer of venue is less drastic than dismissal, however, district courts have broader discretion to transfer venue than to dismiss on forum non convenience grounds. Norwood v. Kirkpatrick, 349 U.S. 29, 32, 75 S.Ct. 544, 546, 99 L.Ed. 789 (1955); All States Freight, Inc. v. Modarelli, 196 F.2d 1010, 1011 (3d Cir. 1952).

manifested in the original choice; the forum preference of defendant; whether the claim arose elsewhere; the convenience of the parties as indicated by their relative physical and financial condition; the convenience of the witnesses--but only to the extent that the witnesses may actually be unavailable for trial in one of the fora; and the location of books and records (similarly limited to the extent that the files could not be produced in the alternative forum).

See Jumara, 55 F.3d at 879-80 (citations and internal quotations omitted). In addition, the public interests that the court must consider include:

the enforceability of the judgment; practical considerations that could make the trial easy, expeditious, or inexpensive; the relative administrative difficulty in the two fora resulting from court congestion; the local interest in deciding local controversies at home; the public policies of the fora; and the familiarity of the trial judge with the applicable state law in diversity cases.

See id.

The court's analysis of these factors is flexible and turns on

the particular facts of the case. Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29-30, 108 S.Ct. 2239, 2243-44, 101 L.Ed.2d 22 (1988). Ordinarily, plaintiff's choice of forum is entitled to great weight and will rarely be disturbed. See Gulf Oil, 330 U.S. at 508. "However, a plaintiff's choice receives less weight where none of the operative facts occurred in the selected forum." Fidelity Leasing, Inc. v. Metavec Corp., Civ. A. No. 98-6035, 1999 WL 269933, at \*2 (E.D. Pa. Apr. 29, 1999) (citation omitted).

### **III. DISCUSSION**

#### **A. Venue is Proper in the Transferee District**

In the instant case, venue is easily established in the Southern District of Indiana, and therefore the case might have been brought there originally. Defendant maintains a regional office in that District, and is therefore subject to personal jurisdiction there. See Jumara, 55 F.3d at 879. Accordingly, since a corporation is deemed to reside in any judicial district in which it is subject to personal jurisdiction, Defendant "resides" in Indiana for the purposes of venue. See id. Moreover, all of the occurrences giving rise to the claim occurred in Indiana. Therefore, venue would be proper in the Southern District of Indiana. Plaintiff does not dispute this conclusion. Thus, the Court's inquiry turns to the private and public interests that help determine whether, considering the convenience of parties and witnesses and the interest of justice, a transfer is appropriate.

**B.    The Interest of Justice and Convenience of the Parties and Witnesses**

Applying the various public and private interests listed above to the facts of this case, the majority of factors indicate this case should be transferred to the Southern District of Indiana. With regards to the private interests, the convenience of the potential witnesses will clearly be served by transferring venue of the current action to the Southern District of Indiana. The claim arose in Indiana where all of the alleged discriminatory acts took place. The witnesses to and perpetrators of the alleged discrimination are employees of Defendant who are likely to reside in Indiana or are within the subpoena power of the Southern District of Indiana. Moreover, Plaintiff herself is a resident of Indiana.

Plaintiff contends that the case should remain in this District because Defendant's USHH Division, for which Plaintiff worked, is headquartered in West Point, Pennsylvania. However, the only connection between the parties and the Eastern District of Pennsylvania is the fact that Defendant's USHH Division is headquartered here. It is evident from the pleadings that none of the operative facts transpired in this District. Moreover, while Plaintiff chose to file her action in the Eastern District of Pennsylvania, her decision is not entitled to much weight since she does not reside in this District and since none of the operative facts occurred in this District. See Lacey v. Cessna Aircraft Co.,

932 F.2d 170, 179 (3d Cir. 1991); Fidelity Leasing, Inc. v. Metavec Corp., Civ. A. No. 98-6035, 1999 WL 269933, at \*2 (E.D. Pa. Apr. 29, 1999); see also Tranor v. Brown, 913 F.Supp. 388 (E.D. Pa.

1996) (transferring case where plaintiffs did not reside in district and acts underlying the claim transpired elsewhere).

In addition to the private interests, the public interests will be served by transferring venue to the Southern District of Indiana. Indiana has a far greater public interest in adjudicating claims of retaliation and discrimination that occurred within its borders than does Pennsylvania. Moreover, if venue is not transferred to the Southern District of Indiana, jury duty will be imposed on the citizens of Pennsylvania who have "no relation to the litigation." See Watt v. Consolidated Rail Corp., Civ. A. No. 97-2203, 1997 WL 288607, at \*2 (E.D. Pa. May 21, 1997). In addition, Plaintiff alleges a cause of action under the Indiana Civil Rights Law. While Plaintiff correctly states that this Court may decide a case involving Indiana law, there is an important public interest in having "cases decided by a court familiar with the substantive law to be applied." Tischio v. Bontex, Inc., 16 F.Supp.2d 511, 519 (D.N.J. 1998); see also Cantor v. Caswell, Civ. A. No. 94-5517, 1994 WL 649324, at \*3 (E.D. Pa. Nov. 15, 1994). Finally, because the witnesses to and perpetrators of the alleged discrimination likely reside in and around Indianapolis, Indiana,

locating the trial within that District would make the trial easier, more expeditious, and less expensive than if it were tried here in the Eastern District of Pennsylvania.

Therefore, for the convenience of the parties and in the interest of justice, the Court will transfer the above-captioned case to the Southern District of Indiana.

An appropriate Order follows.



MARGARET A. EVANS : CIVIL ACTION  
:  
v. :  
:  
MERCK & CO., INC. : NO. 01-4820

## ORDER

AND NOW, this 23<sup>rd</sup> day of January, 2002, upon consideration of Defendant Merck & Co., Inc.'s Motion to Transfer this Action from the Eastern District of Pennsylvania to the Southern District of Indiana Pursuant to 28 U.S.C. § 1401(a) (Docket No. 4), and Plaintiff's Answer to Defendant's Motion to Transfer (Docket No. 5), IT IS HEREBY ORDERED that Defendant's Motion to Transfer is **GRANTED**.

IT IS FURTHER ORDERED that this case is hereby **TRANSFERRED** to the United States District Court for the Southern District of Indiana.

BY THE COURT:

HERBERT J. HUTTON, J.